

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ZABIHOLLAH NAJAFIANASHRAFI,

Plaintiff,

v.

MERRICK B. GARLAND, et al.,

Defendants.

Case No. 1:24-cv-00336-KES-BAM

**ORDER CONSTRUING PLAINTIFF'S
LODGED SECOND AMENDED
COMPLAINT AS MOTION TO AMEND
AND GRANTING MOTION TO AMEND**

(Doc. 9)

**ORDER DIRECTING CLERK OF COURT TO
FILE PLAINTIFF'S LODGED SECOND
AMENDED COMPLAINT AND ISSUE NEW
CASE DOCUMENTS AND SUMMONS**

Plaintiff Zabihollah Najafianashrafi is proceeding *pro se* in this immigration action. Plaintiff initially filed his complaint on March 21, 2024. (Doc. 1.) On April 9, 2024, Plaintiff filed his first amended complaint. (Doc. 5.) No summons was issued as the Court had previously issued findings and recommendations recommending Plaintiff's application for leave to proceed *in forma pauperis* be denied. (Doc. 4.) Plaintiff was subsequently ordered to pay the filing fee in full to proceed with the action. (Doc. 7.) On September 16, 2024, Plaintiff paid the filing fee and lodged a second amended complaint. (Doc. 9.)

DISCUSSION

Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend its pleading once as a matter of course at any time before a responsive pleading is served. Fed. R. Civ. P.

1 15(a). Otherwise, a party may amend only by leave of the court or by written consent of the
2 adverse party, and leave shall be freely given when justice so requires. *Id.* “Rule 15(a) is very
3 liberal and leave to amend shall be freely given when justice so requires.” *AmerisourceBergen*
4 *Corp. v. Dialysist West, Inc.*, 465 F.3d 946, 951 (9th Cir. 2006) (citation and quotation omitted).
5 However, courts “need not grant leave to amend where the amendment: (1) prejudices the
6 opposing party; (2) is sought in bad faith; (3) produces an undue delay in litigation; or (4) is
7 futile.” *Id.*

8 As Plaintiff had previously filed his first amended complaint, he is required to seek leave
9 of the Court or obtain written consent of the adverse parties to further amend his complaint. Fed.
10 R. Civ. P. 15(a). The Court therefore construes Plaintiff’s lodging of a second amended
11 complaint as a motion for leave to amend his first amended complaint. (Doc. 9.) In considering
12 the relevant amendment factors, the Court finds no evidence of prejudice, bad faith, undue delay
13 in litigation, or futility. No defendants have been served or appeared in this action, Plaintiff’s
14 second amended complaint was filed soon after Plaintiff was required to pay the filing fee in the
15 matter, and the amendment does not appear to be futile or to be made in bad faith. *Id.*
16 Accordingly, Plaintiff’s motion to amend will be granted. The Clerk of the Court will be directed
17 to file Plaintiff’s lodged second amended complaint and to issue new case documents and
18 summons as Plaintiff has now paid the filing fee in this matter.

19 **CONCLUSION AND ORDER**

20 For the reasons stated, IT IS HEREBY ORDERED as follows:

- 21 1. Plaintiff’s motion to amend is GRANTED;
- 22 2. The Clerk of the Court is DIRECTED to file Plaintiff’s lodged second amended
- 23 complaint (Doc. 9.); and
- 24 3. The Clerk of Court is DIRECTED to issue new case documents and summons.

25 IT IS SO ORDERED.

26 Dated: September 18, 2024

27 /s/ Barbara A. McAuliffe
28 UNITED STATES MAGISTRATE JUDGE